

**Tentative Rulings for March 28, 2023**  
**Department 403**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG03023	<i>In Re: Oscar Delgado</i> is continued to Wednesday, March 29, 2023 at 3:30 p.m. in Department 403
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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 403**

Begin at the next page

(37)

**Tentative Ruling**

Re: ***Kubota Credit Corporation USA v. Goodland Global Farm Inc.***  
Superior Court Case No. 22CECG00274

Hearing Date: March 28, 2023 (Dept. 403)

Motion: By Plaintiff Kubota Credit Corporation USA to:  
Strike Defendant Goodland Global Farm Inc.'s Answer;  
Compel Further Responses to Discovery; and  
For Monetary Sanctions

**Tentative Ruling:**

To continue the motions to Thursday, April 27, 2023 at 3:30 p.m. in Department 403, in order to allow the parties to meet and confer in person or by telephone, as required for the motion to strike. If this resolves the issues, plaintiff shall call the court to take the motion off calendar. If it does not resolve the issues, counsel for plaintiff shall file a declaration, on or before April 13, 2023, stating the efforts made.

The motions to compel further responses to discovery and request for monetary sanctions are also continued to follow the motion to strike.

**Explanation:**

Code of Civil Procedure section 435.5 makes it clear that meet and confer must be conducted "in person or by telephone. (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the other party failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Ibid.*) The moving party must file a declaration stating either the means by which the parties met and conferred or that the opposing party failed to meet and confer in good faith. (*Ibid.*) There are limited instances in which the meet and confer requirement does not apply: 1) for an unrepresented party who is incarcerated; 2) proceedings in forcible entry, forcible detainer, or unlawful detainer; 3) an anti-SLAAP motion; and 4) a motion less than 30 days before trial. (*Id.* at subd. (d).)

Here, the corporation defendant is currently unrepresented by counsel, but this is not one of the limited circumstances in which the obligation to meet and confer is not required. Plaintiff's counsel has the contact information for the corporation defendant in the orders where former defense counsel was relieved. Plaintiff's counsel is to attempt to meet and confer with defendant and submit a declaration describing these efforts.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the

court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

## Tentative Ruling

Issued By: JS on 3/22/2023  
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: **Veronica Lawson v. Sunrise Medical (US) LLC et al.**  
Superior Court Case No. 21CECG02434

Hearing Date: March 28, 2023 (Dept. 403)

Motion: (1) By Defendant Sunrise Medical for Admission Pro Hac Vice of Chad R. Hutchinson  
(2) By Defendant Sunrise Medical for Admission Pro Hac Vice of Mark A. Dreher

**Tentative Ruling:**

To deny the applications of each of Chad R. Hutchinson and Mark A. Dreher for admission pro hac vice, without prejudice.

**Explanation:**

Defendant Sunrise Medical seeks admissions pro hac vice of Chad R. Hutchinson and Mark A. Dreher, members in good standing with the Mississippi State Bar.

While the applications appear to be in substantial compliance with California Rules of Court, rule 9.40 as to substance, none of the proofs of service identify service of either the application or the notices of motion to the State Bar of California at its San Francisco office, which is required. (Cal. Rules of Ct., rule 9.40(c)(1).) The notice must be given at the time prescribed in Code of Civil Procedure section 1005. (*Ibid.*) Further, the fee for application must accompany the service of the application and notice of motion to the State Bar of California. (*Id.*, rule 9.40(e).)

Here, counsel of record declared that the application will be served, and the fee will be paid to the State Bar of California. (Ferguson Decl., ¶ 6.) As noted above, these acts must be done prior to hearing, and in accordance with Code of Civil Procedure section 1005. As there is no evidence to demonstrate compliance with the service and fee requirements to the State Bar of California, each of the motions for admission pro hac vice for Chad R. Hutchinson and Mark A. Dreher are denied, without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: JS on 3/23/2023.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: **Gonzales v. D'Oros, Inc.**  
Superior Court Case No. 22CECG00244

Hearing Date: March 28, 2023 (Dept. 403)

Motion: Demurrer of Defendants D'Oros, Inc. and Maria Rosario Garcia to the First Amended Complaint

**Tentative Ruling:**

To sustain defendants' demurrer to the First Amended Complaint, without leave to amend. Defendants D'Oros, Inc. and Maria Rosario Garcia are directed to submit to this court, within 7 days of service of the minute order, a proposed judgment dismissing the entire action.

**Explanation:**

The court grants the request for judicial notice as to all documents. (Code Civ. Proc., §§ 452, 453.) The judicially noticed documents clearly concern the same property which is the subject of the First Amended Complaint, namely 4755 E. Braly Avenue, Fresno, California 93702, APN 471-241-31. This property, and another property also tangentially mentioned in the First Amended Complaint (4767 E. Braly Avenue, Fresno, California 93702, APN 471-241-29) were brought under the jurisdiction of the United States Bankruptcy Court in plaintiff Johnny Gonzales' bankruptcy case, No. 19-14170-B-7. The judicially noticed documents further reflect that on June 2, 2020, the bankruptcy court granted the bankruptcy trustee's motion to sell these properties to Drake Equity, Inc., and judicial notice is also taken of the Grant Deed reflecting the trustee's transfer of the 4755 E. Braly property to Drake Equity, Inc. Later (in and around October 2020) a Grant Deed was recorded whereby Drake Equity Inc. transferred title of the 4755 E. Braly property to D'Oros, Inc.

Plaintiff Johnny Gonzales was found to be a vexatious litigant on March 24, 2022, and after he failed to post the security that was required for him to maintain this action, on August 26, 2022, the court granted defendants' ex parte application to dismiss him from the action. Therefore, only plaintiff Philip Marin remains in the action. However, as the court already found in ruling on defendants' vexatious litigant motion (combined with a motion to expunge lis pendens), the First Amended Complaint "fails to provide facts linking plaintiff Marin to the dispute altogether." (Min. Ord. dtd. March 24, 2022.)

Therefore, sustaining the demurrer to the First Amended Complaint is appropriate. First, there are no facts linking plaintiff Marin to the dispute over the subject real property. It is evident from the judicially noticed documents that he had no titled interest in the property. Second, it is clear that the First Amended Complaint seeks to invalidate the order from the Bankruptcy Court authorizing the sale of the subject property, and thus to attack defendant D'Oros, Inc.'s ultimate ownership of the property, based on alleging fraud perpetrated on the Bankruptcy Court, and this court lacks jurisdiction to override or

set aside any order of the that court. "So that the debtor's estate may be properly administered and the rights of creditors safeguarded, state courts may not intrude on the bankruptcy court's exclusive jurisdiction." (*Miller v. R. K. A. Management Corp.* (1979) 99 Cal.App.3d 460, 466.) The bankruptcy court's exclusive jurisdiction deprives state courts of subject matter jurisdiction to hear collateral attacks on orders from the bankruptcy court. (*Gonzales v. Parks* (9th Cir. 1987) 830 F.2d 1033, 1034-1035, and fn 1; *Saks v. Parilla, Hubbard & Miltzok* (1998) 67 Cal.App.4th 565, 568 (citing and quoting *Gonzales v. Parks*).) Therefore, no leave to amend can be granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** JS **on** 3/24/2023.  
(Judge's initials) (Date)

### Tentative Ruling

***In re Jonah Rodgers***

March 28, 2023 (Dept. 403)

## Petition to Compromise Minor's Claim

To grant and sign the proposed orders. No appearance necessary.

## Tentative Ruling

Issued By: JS on 3/27/2023  
(Judge's initials) (Date)